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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,204	04/22/2004	David Jon Haan	P-4211-US1	5533
49443 7590 05/22/2008 Pearl Cohen Zedek Latzer, LLP 1500 Broadway 12th Floor New York, NY 10036				
EXAMINER				
SHAY, DAVID M				
ART UNIT		PAPER NUMBER		
3735				
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05/22/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/829,204

Applicant(s)

HAAN ET AL.

Examiner

david shay

Art Unit

3735

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on February 25, 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 15-30, 33-43 and 46-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 15-30, 33-43 and 46-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

The drawings are objected to because Figures 3a, 3b, 4a, 4b, and 5 either are photocopies of photographs wherein the contrast is too poor to distinguish separate elements discussed in the specification relating thereto nor are the lead lines distinguishable in these Figures. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “irrigating an area”; “an irrigation mechanism”; and “a second optical fiber” must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will

be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Applicant argues that Kittrell et al does not disclose fibers with “dimensions to modify the electromagnetic radiation (c.g. laser light) to a modified radiation having a Gaussian, Bell shaped curve parabolic and/or Lorentzian or other such distributions.” The examiner firstly notes that the claims at bar recite “a graded index fiber having dimensions to modify the electromagnetic radiation to a modified electromagnetic radiation...” as set forth more clearly below, Kittrell et al teach a graded index fiber having the disclosed dimensions. Thus having the dimensions disclosed to produce the Gaussian output, as disclosed in the instant specification, the fiber of Kittrell et al must inherently produce the same Gaussian output. Thus these arguments are not convincing.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 2, 7-12, 15-17, 20-22, 24-27, 30, 33-38, 43 and 46-51 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kittrell et al.

Kittrell et al teach the use of optical fibers which may be gradient refractive index type fibers (see column 13, lines 10-11) which can be one half to two meters long (see column 7, lines 54-57) and thus “having dimensions to modify the electromagnetic radiation...” as disclosed in the originally filed disclosure at page 8, paragraph 2, as it is longer than the 20 cm disclosed therein and with a core size of for example 133 microns (see column 22, lines 41-45), which is considered to be “about 150 to 1000 micrometers” as disclosed in the originally filed disclosure,

the paragraph bridging pages 6 and 7; and teaches the provision of irrigation, aka purge (see column 15, lines 45-48).

Claims 1-3, 6-11, 15-18, 20, 21, 23-28, 30, 33-36, 38, 40, 41, 43, 46, and 47 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Fischer et al.

Fischer et al teach the use of optical fibers which may be gradient refractive index type fibers (see column 3, lines 8-9) which can be 5 to 50 millimeters long (see column 3, lines 54-55) and thus “having dimensions to modify the electromagnetic radiation...” as disclosed in the originally filed disclosure at page 8, paragraph 2, as it is longer than the 20 cm disclosed therein and while there is no particular core size disclosed, the end piece (element 5, Figure 1) is illustrated as being of the same diameter as the fiber (see element 2, Figure 1) which is disclosed as 50 to 1000 microns (see column 3, lines 46-48), which is considered to be “about 150 to 1000 micrometers” as disclosed in the originally filed disclosure, further, it is clear that the quartz rod must be of the claimed dimensions, since radiation output thereby “can be a Gaussian distribution, a super Gaussian, a parabolic or also a ring shaped distribution” (see the paragraph bridging columns 3 and 4).

Claims 5 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer et al in combination with Mann et al. Fischer et al teaches a device and method such as claimed except for the laser. Mann et al teach the equivalence of Ho:YAG and THC:YAG lasers for medical purposes. It would have been obvious to the artisan of ordinary skill to employ the laser of Mann et al in the device and method of Fischer et al, since these are equivalents, as taught by Mann et al, thus producing a device and method such as claimed.

Claims 4, 19, 29 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer et al in combination with Brauer. Fischer et al teaches a device and method such as claimed except for the laser. Brauer teaches the equivalence of Ho:YAG and Nd:YAG lasers emitting at 1.06 microns for medical purposes (see e.g. column 12, lines 41-47). It would have been obvious to the artisan of ordinary skill to employ the laser of Brauer in the device and method of Fischer et al, since these are equivalents, as taught by Brauer, thus producing a device and method such as claimed.

Applicant's arguments filed February 25, 2008 have been fully considered but they are not persuasive. The arguments are not persuasive for the reasons set forth above.

Applicant's arguments with respect to claims 3, 4, 11, 18-20, 28, 29, 38, 41-43, 46, and 48-51 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to david shay whose telephone number is (571) 272-4773. The examiner can normally be reached on Tuesday through Friday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II, can be reached on Monday, Tuesday, Wednesday, Thursday, and Friday. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/david shay/

Primary Examiner, Art Unit 3735